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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. ——

UNITED STATES OF AMERICA, PETITIONER

v.

BERNARD W. COBLENTZ, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

The Solicitor General, on behalf of the United States, files this petition for a writ of certiorari to review the judgment of the Court of Appeals of the State of New York in this case.

OPINIONS BELOW

The opinion of the Supreme Court of New York County (R. 23) is unreported. The orders of the Appellate Division of the Supreme Court affirming the Supreme Court of New York County (R. 32–33) and granting leave to appeal to the Court of Appeals (R. 30–31) are reported at 4 App. Div. 2d 869(10) and 4 App. Div. 2d 947(23), respectively. The opinion of the Court of Appeals (Appendix, *infra*, pp. 13–31), is reported at 5 N.Y. 2d 300.

JURISDICTION

The judgment of the Court of Appeals of the State of New York was entered on March 5, 1959. (Appendix, *infra*, pp. 32–33). On June 1, 1959, by order of Mr. Justice Harlan, the time for filing a petition for a writ of certiorari was extended to July 31, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

QUESTIONS PRESENTED

1. Whether, in the distribution of a fund arising from a judgment on condemnation of property, a claim of the United States against the former owner of the property for taxes is entitled to priority over the fee of an attorney representing the property owner in the condemnation proceeding, which fee was covered by an assignment of a portion of the award at the commencement of the proceeding.

2. Whether, as to the same fund, the United States' claim for taxes is entitled to priority over a claim for rentals which under New York law was related back to the commencement of the proceeding.

STATUTES INVOLVED

Internal Revenue Code of 1954:

SEC. 6321. LIEN FOR TAXES.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in ad-

dition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C., Supp. V, 6321.)

SEC. 6322. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed is satisfied or becomes unenforceable by reason of lapse of time.

(26 U. S. C., Supp. V, 6322.)

SEC. 6323. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGEMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*—Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) *Under state or territorial laws.*—In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; * * *.

* * * * *

(26 U.S.C., Supp. V, 6323.)